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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/463,675	05/12/00	BEHLER A	H3033

IM22/0622

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EXAMINER	
HARDEE, J	
ART UNIT	**PAPER NUMBER**
1751	13

DATE MAILED: 06/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/463,675	Applicant(s) Behler et al.
	Examiner John R. Hardee	Art Unit 1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *Apr 23, 2001*

2a)☒ This action is **FINAL.** 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15-30* is/are pending in the application.

4a) Of the above, claim(s) *23-30* is/are withdrawn from consideratio

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)☐ All b)☐ Some* c)☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☐ Notice of Refarancas Cited (PTO-892)
16) ☐ Notice of Draftsparson's Patent Drawing Review (PTO-948)
17) ☐ Information Disclosura Statamant(s) (PTO-1449) Papar No(s). _____
18) ☐ Interview Summary (PTO-413) Paper No(s). _____
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Othar:

DETAILED ACTION

Election/Restriction

1. Applicant's election with traverse of Group 1A in Paper No. 10 is acknowledged. The traversal is on the ground(s) that the examiner has not cited a relevant legal precedent. This is not found persuasive because while the examiner does not have at hand any such legal precedents, the examiner has cited PCT Rules 13.1 and 13.2 which say, in essence, that an obvious or anticipated invention lacks unity of invention.

The requirement is still deemed proper and is therefore made FINAL.

A complete response to the final rejection would include the cancellation of non-elected subject matter. As no final rejection has been written prior to this one, no cancellation has been necessary.

Claim Rejections - 35 USC § 103

2. Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weinelt et al., US 5,880,086. The examiner maintains the rejection.

3. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weinelt et al., US 5,880,086 in view of Severns et al., US 5,531,910. The examiner maintains the rejection.

Response to Arguments

4. Applicant's arguments filed April 23, 2001 have been fully considered but they are not persuasive. Applicant argues that the Weinelt reference teaches that nonionic surfactant and polyol are optional ingredients, that they are therefore unnecessary, and that the person of ordinary skill in the surfactant art would not find it obvious to add both to the disclosed compositions. This is not persuasive because regardless of whether or not the ingredients are mandatory, addition of a non-zero amount of each or both is disclosed in the reference. A prior art reference may be relied upon for all that it would have reasonably conveyed to one having ordinary skill in the art. The pertinence of a prior art reference is not confined to specific working examples. *In re Burckel,* 592 F.2d 1175, 201 USPQ 67 (CCPA 1979); *In re Lamberti,* 545 F.2d 747, 192 USPQ 278 (CCPA 1976); *In re Mills,* 470 F.2d 649, 176 USPQ 196 (CCPA 1972); *In re Susi,* 440 F.2d 442, 169 USPQ 423 (CCPA 1971). When ingredients are well known and combined for their known properties, the combination is obvious absent unexpected results. *In re Crocket*, 126 USPQ 186 and *In re Pinten*, 173 USPQ 801.The person of ordinary skill in the surfactant art would expect combinations of these materials to behave in the same fashion as the individual materials, absent unexpected results.

Applicant argues that the Weinelt reference does not teach applicant's claimed weight ratio. This is not persuasive because, following the teachings of the reference, applicant could make compositions which do meet this ratio. If applicant can demonstrate that the claimed ratio is critical, this would be afforded patentable weight.

The combination of Weinelt and Severns is attacked based on the perceived inadequacy of the Weinelt reference. Examiner has responded above to the arguments involving Weinelt.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (703) 305-5599. The examiner can normally be reached on Monday through Friday from 7:30 until 4:00. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (703) 308-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

John R. Hardee
Primary Examiner
April 30, 2001